UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 24-20753-CIV-BECERRA/TORRES

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANIEL SAINT-HILAIRE,

Defendants.
_____/

REPORT AND RECOMMENDATION
ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Plaintiff United States of America's ("Plaintiff" or "the Government") Motion for Summary Judgment. [D.E. 68]. Defendant Aniel Saint-Hilaire ("Defendant" OR "Saint-Hilaire") responded [D.E. 75], and Plaintiff replied [D.E. 76]. The motion is now ripe for disposition. On November 11, 2025, the Honorable Jacqueline Becerra referred this motion to the Undersigned for a Report and Recommendation. [D.E. 100]. Upon thorough and careful review of the record and the applicable law, and for the reasons set forth below, we **RECOMMEND** that the Government's motion should be **GRANTED in part and DENIED in part**.

I. BACKGROUND

The Government brought this action against Defendant Aniel Saint-Hilaire, a tax return preparer for "over 20-some years" [D.E. 67-2 at 14:10–23], for violations of

the Internal Revenue Code. [D.E. 1 at 1]. The Government alleges Mr. Saint-Hilaire "is engaged in a massive fraud, 'preparing fraudulent federal income tax returns that purposely underreport the tax his customers owe and claim refunds they are not entitled to receive.'" [D.E. 31 at 2] (citing [D.E. 4 at 1]). Additionally, Mr. Saint-Hilaire is accused of preparing these tax returns and filing them using the credentials of other individuals with whom he is affiliated and affixing other preparer names and unique identifying numbers in violation of the revenue laws. [D.E. 68 at 9].

The Government sued Mr. Saint-Hilaire in February 2024 after years of prior investigations, warnings, and fines imposed by the IRS dating back to 2013 [D.E. 31 at 9–10]—actions the Government alleges have not been sufficient to stop Mr. Saint-Hilaire's violations of the revenue laws. [D.E. 68 at 1–2] ("Put simply: the Court must stop Mr. Saint-Hilaire."). Following an April 5, 2024, hearing, District Judge Jacqueline Becerra issued a preliminary injunction under §§ 7402, 7407, and 7408 of the Internal Revenue Code enjoining Defendant from:

> [A]cting as a federal tax return preparer and preparing or filing federal tax returns, amended tax returns, or any other federal tax documents or forms for any person or entity other than himself; assisting in, advising, or directing the preparation or filing of federal tax returns, amended returns, or any other federal tax documents or forms for any person or entity other than himself; investing in, providing capital or loans to, or receiving fees or renumeration from a tax return preparation business; and operating managing, working in, controlling, licensing, consulting with, or franchising a tax return preparation business.

[D.E. 31 at 25–26].

After further discovery, including an evidentiary hearing [D.E. 33] and an

attempt by Defendant to have the preliminary injunction revoked or amended [D.E. 60], the Government now seeks summary judgment against Mr. Saint-Hilaire for violations of §§ 7402, 7407, and 7408 of the Internal Revenue Code. [D.E. 68].

Upon review of the briefing before the Court, we find the motion, response, and reply to be sufficient as submitted, and thus no hearing has been held. Accordingly, this action is now ripe for disposition.

II. APPLICABLE PRINCIPLES AND LAW

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In both moving for and opposing summary judgment, arguments "that a fact cannot be or is genuinely disputed must [be] support[ed]" by:

> [C]iting to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or[] showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1)(A), (B).

However, "the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). Further, "the burden is placed on the moving party to establish both the absence of a genuine material fact and that it is entitled to judgment as a matter of law." *Matsushita*

Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). All reasonable doubts must therefore be resolved in favor of the non-moving party. *Anderson*, 477 U.S. at 255.

But to overcome a motion for summary judgment, the non-movant must nonetheless show—not based solely on the pleadings, but by citation to "materials in the record"—that specific facts exist that demonstrate a genuine issue for trial. *See* Fed. R. Civ. P. 56(c), (e); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (requiring "the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial") (internal quotations omitted). Moreover, "[t]he moving party bears the initial burden of showing, by reference to materials on file, that there are no genuine disputes of material fact." *United States v. Askins & Miller Orthopaedics, P.A.*, No. 8:17-CV-92-T-27AAS, 2020 WL 619550 (M.D. Fla. Feb. 10, 2020) (citing *Hickson Corp. v. N. Crossarm Co., Inc.*, 357 F.3d 1256, 1260 (11th Cir. 2004)). "[T]his standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment," as "the requirement is that there be no *genuine* issue of *material* fact." *Anderson*, 477 U.S. at 247-48 (emphasis in original). "An issue of fact is 'material' if, under the applicable substantive law, it might affect the outcome of the case." *Hickson Corp.*, 357 F.3d at 1259. "An issue of fact is 'genuine' if the record taken as a whole could lead a rational trier of fact to find for the nonmoving party." *Id.* at 1260.

"A court need not permit a case to go to a jury[] when the inferences that are drawn from the evidence, and upon which the non-movant relies, are 'implausible.'" *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 743 (11th Cir. 1996) (citing *Matsushita Elec. Indus. Co.*, 475 U.S. at 592–94). "Where the evidence is circumstantial, a court may grant summary judgment when it concludes that no reasonable jury may infer from the assumed facts the conclusion upon which the non-movant's claim rests." *Id.*

III. ANALYSIS

The Government seeks summary judgment in its favor and asks the Court to (1) issue a permanent injunction against Defendant under §§ 7402, 7407, and 7408 of the Internal Revenue Code ("IRC"); and (2) order reasonable disgorgement of "Mr. Saint-Hilaire's ill-gotten gains," under § 7402 of the IRC. [D.E. 68 at 2]. We will take each in turn.

A. Injunctive Relief

26 U.S.C. § 7402, or I.R.C. § 7402, details the jurisdiction of district courts over "civil actions involving internal revenue." I.R.C. § 7402(f). More specifically, I.R.C. § 7402(a) is the basis of our more general jurisdiction in such cases to, among other things, issue injunctions (and, as we will address later, order disgorgement):

> The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the

> enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

I.R.C. § 7402(a). In other words, "[t]he language of § 7402(a) encompasses a broad range of powers necessary to compel compliance with the tax laws." *U.S. v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir. 1984) (hereinafter *Ernst*). It is, basically, a catch-all—having "been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute." *Id.* (collecting cases). As such, "the decision to issue an injunction under § 7402(a) is governed by the traditional factors shaping the district court's use of the equitable remedy." *Id.* at 1301 (collecting cases).

This Court has already addressed the equitable circumstances of this case in the context of a preliminary injunction, which was issued by the District Judge on May 15, 2024, when faced with many of the same inquiries under §§ 7402, 7407, and 7408. [D.E. 31]. In so ordering, Judge Becerra found that the Government had demonstrated, "'(1) a substantial likelihood of success on the merits; (2) that irreparable injury [would] be suffered unless the injunction issue[d]; (3) the threatened injury to the movant outweigh[ed] whatever damage the proposed injunction [would] cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.'" *Id.* at 21 (citing *Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A.,* 320 F.3d 1205, 1210 (11th Cir. 2003)).

"Permanent injunctive relief requires three elements: (1) success on the merits;

(2) continuing irreparable injury; and (3) no adequate remedy at law." *Keener v. Convergys Corp.*, 342 F.3d 1264, 1269 (11th Cir. 2003) (citing *Newman v. Alabama*, 683 F.2d 1312, 1319 (11th Cir. 1982)); *see U.S. v. Khan*, No. 5:03-CV-436, 2006 WL 2037165, at *1 (M.D. Fla. July 18, 2006) ("In assessing whether permanent injunctive relief is warranted under [§ 7402(a)], the Court must determine whether the United States has satisfied the following three criteria: (1) Baxley has interfered with the administration and/or enforcement of the internal revenue laws; (2) a continuing irreparable injury to the United States in the absence of an injunction; and (3) lack of an adequate remedy at law.") (citation omitted), *aff'd*, 244 F. App'x 270 (11th Cir. 2007).

But there are other provisions within the Internal Revenue Code that confer jurisdiction to issue injunctions and penalties for violations, and first addressing the Government's arguments under those sections of the Code will better inform our inquiry as to whether the equities weigh in favor of a permanent injunction under any or all of §§ 7402, 7407, and 7408. Accordingly, and following the majority of the Government's argument in its motion, we will begin by assessing whether the Government has prevailed under § 7407, before addressing §§ 7402 and 7408.

1. Internal Revenue Code § 7407

I.R.C. § 7407 empowers the United States, via a civil action in district court, to seek an injunction against a tax preparer for engaging in prohibited conduct. I.R.C. § 7407(a). To issue an injunction prohibiting a defendant from further engaging in the alleged conduct, a district court's findings must be twofold:

> (1) that a tax return preparer has—
>
> (A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided this title,
>
> (B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as a tax preparer,
>
> (C) guaranteed the payment of any tax refund or the allowance of any tax credit, *or*
>
> (D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws, *and*
>
> (2) that injunctive relief is appropriate to prevent the recurrence of such conduct[.]

I.R.C. § 7407(b)(1)–(2) (emphasis added).

But, as a further measure, to issue an injunction enjoining a defendant from acting as a tax return preparer in the entirety (*i.e.*, the remedy the Government seeks here [D.E. 68-1 at 2]), a district court must find that a defendant has "continually or repeatedly engaged in *any* conduct described in subparagraphs (A) through (D) [above] and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title[.]" I.R.C. § 7407(b)(2) (emphasis added).

In *Ernst*, the Eleventh Circuit summarized the "three prerequisites" for relief under this statute: "[I]n order to issue an injunction pursuant to § 7407, three prerequisites must be met: first, the defendant must be a tax preparer; second, the conduct complained of must fall within one of the four areas of proscribed conduct, § 7407(b)(1); and third, the court must find that an injunction is 'appropriate to prevent the recurrence' of the proscribed conduct, § 7407(b)(2)." *Ernst*, 735 F.2d at 1303 (citing I.R.C. § 7407(b)(1)–(2)).

The first question, then, as it pertains to Mr. Saint-Hilaire, is whether he has engaged in any prohibited conduct under § 7407(b)(1). The Government's argument focuses largely on § 7407(b)(1)(A): "that a tax return preparer has[] engaged in any conduct subject to penalty under section 6694 or 6695 [of the Internal Revenue Code]." [D.E. 68 at 3–12].

It is undisputed in this case that Mr. Saint-Hilaire is indeed a tax return preparer. [D.E. 77 ¶ 1]. But Defendant also claims at various points that, even if was a preparer on a certain return, he was either not the only one, was not the final sign-off, or the client otherwise provided erroneous information. *See, e.g.*, [D.E. 77 ¶¶ 30, 42, 43]. As discussed at length below, Defendant's claims fall flat. But because § 7407, and violations of related Code provisions, are contingent upon identifying Mr. Saint-Hilaire as the tax preparer who indeed violated these provisions, we begin by analyzing his actions under § 6695, and whether there is any question of material fact whether he indeed filed tax returns without properly identifying himself as the paid preparer.

a. <u>Internal Revenue Code § 6695</u>

Section 6695 of the Internal Revenue Code regards "[o]ther accessible penalties with respect to the preparation of tax returns for other persons," including failure to sign a tax return; failure to furnish one's identifying number; and failure to file correct information a tax return. I.R.C. § 6695(b), (c), (e). Under subsections (b) and (c) of § 6695, "the IRS can assess penalties against return preparers who do not comply with the requirements of 26 U.S.C. § 6109" which "requires paid return

preparers to identify themselves on the returns they prepare for customers by including their preparer tax identification number ('PTIN') on the return." *United States v. Espinal*, No. 11-20418-CIV, 2021 WL 3666323, at *4 (S.D. Fla. Aug. 18, 2021). In particular, the Government alleges that Mr. Saint-Hilaire acted as a "ghost preparer"—a paid tax return preparer who violates § 6695 by preparing but not signing the tax returns. *Id.*; [D.E. 68 at 9].

It merits addressing at the outset that Defendant's response in opposition to the Government's motion for summary judgment, and associated counterstatement of facts ("CSMF"), are rather lacking. Mr. Saint-Hilaire's opposition is approximately three pages, split between a background and legal standard section, and not once addresses one of the Internal Revenue Code provisions identified by the Government. [D.E. 75]. In fact, his opposition does not once cite to any evidence in the record. *Id.* His CSMF [D.E. 77] fares little better and is the subject of a motion to strike by the Government due to untimeliness. [D.E. 78].

While we decline to strike Defendant's CSMF from the record, it suffers from similar deficiencies to those in Mr. Saint-Hilaire's opposition. His CSMF consists, by and large, of conclusory refutations of the Government's statement of facts ("SMF"). But the only citations to any part of the record that could support his refutations stem from Mr. Saint-Hilaire's deposition—and even then, they are scant.[1]

[1] We also note that some of these citations to Mr. Saint-Hilaire's deposition do not accord with the proposition for which they are cited. *Contrast, e.g.*, [D.E. 77 ¶ 14] (citing page forty-seven of Defendant's deposition for the proposition that "Mr. Saint Hilaire is not the only tax preparer and other individuals would finalize returns in

On a summary judgment footing, this complicates Mr. Saint-Hilaire's opposition from the outset. While a self-serving but factual affidavit or testimony may be sufficient to defeat summary judgment, such statements may not be conclusory. *United States v. Stein*, 881 F.3d 853, 857 (11th Cir. 2018) ("A non-conclusory affidavit which complies with Rule 56 can create a genuine dispute concerning an issue of material fact, . . ."); *see also Berber v. Wells Fargo, NA*, 798 F. App'x 476, 480 (11th Cir. 2020) ("self-serving element should be weighed alongside the rest of the affidavit by the finder of fact.") (affirming summary judgment where conclusory self-serving affidavit not supported with facts supporting protected activity to support whistleblower claim). Federal Rule of Civil Procedure 56 "provides that judgment 'shall be entered' against the nonmoving party unless affidavits or other evidence 'set forth specific facts showing that there is a genuine issue for trial.' The object of this provision is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990) (citing Fed. R. Civ. P. 56(e)); *see Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

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addition to Mr. Saint Hilaire.") *with* [D.E. 67, Exhibit 2 at 47] (discussing the number of computers at the office; the possibility of remote work; and whether others had their own log-in information).

We do not find such facts in Defendant's opposition—or, for that matter, the only document cited-to: his deposition. He thus presented a paper-thin record with which to support his denials. And to the extent any facts are supposedly alleged, Defendant's own testimony or other representations to the Court contradict them.

For example, Mr. Saint-Hilaire testifies in his deposition that he never filed a tax return using another PTIN:

> Q. Well, when you were filing taxes, you used your PTIN to file tax returns, correct?
> A. Uh-huh.
> Q. Did you file under any other PTINs?
> A. I do not – I don't file under any PTIN – anybody's PTIN.
> Q. You don't file on anyone's PTIN?
> A. That's what you're trying to say, right?
> Q. I am trying to ask if you have ever filed a tax return using another PTIN?
> A. No.
> Q. Never?
> A. Never.

[D.E. 67 Ex. 2 at 17:9–21].

He is very clear: "No. . . . Never." *Id.* But Defendant's other filings in this Court show otherwise. In Docket Entry 60, his expedited motion to lift the preliminary injunction, Mr. Saint-Hilaire represents that the tax returns included in exhibit [D.E. 60-1], which span the years 2022 and 2023, are "prepared by Mr. Saint Hilaire." [D.E. 60 at 5] ("A review of the attached returns prepared by Mr. Saint Hilaire most recently (prior to the entry of preliminary injunction) . . . ."). It is immediately clear when looking through [D.E. 60-1], the "attached returns prepared by Mr. Saint Hilaire," that said compilation of prepared tax returns contains

numerous returns that are filed under other "paid preparer" names at PTINs. *See, e.g.*, [D.E. 60-1 at 63–64 (Form 1040 for Daniela Martinez, reflecting paid preparer as Pelancia Victor, under the firm Divine Tax Services LLC, and with PTIN 1793), 65–66 (Form 1040 for Babette St Fort, with same paid preparer information), 67–68 (Form 1040 for Chantale Alerte, with same paid preparer information)]. In fact, a simple "Control + F" search of [D.E. 60-1] reveals 131 instances of "Divine Tax Services" and 133 instances of "Pelancia Victor."

What's more, these prepared returns in [D.E. 60-1], largely bearing someone else's PTIN, are supposedly the result of "improved business practice[s] and the implementation of added security measures." [D.E. 60 at 5]; *see also id.* at 2 ("The issues of concern raised by the government have been curtailed and the danger of irreparable harm has been removed due to the change in practice that Mr. Saint Hilaire has implemented . . . ."). So, not only has Defendant represented that *he* prepared multiple tax returns bearing another individual's PTIN at the close of the form, but also that those tax returns ostensibly reflect the "improved business practice[s]" that came as a result of the IRS bringing to his attention issues with his tax return practices. *Id.* at 5.

Additionally, Defendant has also testified that if he reviewed and finalized a tax return, he would "make sure that [his] PTIN is there":

> Q. So if you are finalizing and reviewing, you don't confirm that the PTIN is yours?
> A. No, No. If I review it, I make sure that my PTIN is there, if I review a tax.
> Q. So you make sure that your PTIN is on the ones that you finalized?

A. Yes.

[D.E. 67-2 at 64:3–9]. But the tax returns in [D.E. 60-1] overwhelmingly demonstrate that this conclusion is not supported by the record. Mr. Saint-Hilaire's PTIN was supposed to be "7315" but that number was revoked by the IRS in 2017. [D.E. 33 at 36:15–16].

And Defendant's expedited motion goes even further, suggesting that Mr. Saint-Hilaire was indeed "a threat" to clients prior to implementing a "change in practice": "This injunction has cost him so dearly that *he is no longer a threat to any clients he may take on or the public at large*." *Id.* at 2 (emphasis added). But, as discussed, the "change in practice" still entails Mr. Saint-Hilaire filing tax returns with another individual's PTIN. So, while Defendant may have testified that he did not—not *ever*—use anyone else's PTIN, that is, by his own admission in [D.E. 60], incorrect. Evidently, Defendant has repeatedly used—at least—Ms. Victor's PTIN in the past. The very near past, in fact, but-for the preliminary injunction.

Also of interest and import for the below analysis into § 6694 (regarding a tax return preparer's understatement of a taxpayer's liability) the oft-used "1793" PTIN on Mr. Saint-Hilaire's submitted returns in [D.E. 60-1] is identical to the PTIN used on various other tax returns identified by the Government as containing allegedly false information—sometimes with different preparer information. For instance, [D.E. 29-4] reflects the PTIN "1793," with the firm name "Divine Tax Services LLC" and the preparer's name as "A," while the PTIN "1793" shows up numerous times in [D.E. 60-1], in association with "Pelancia Victor" and "Divine Tax Services LLC." *See*

also, e.g., [D.E. 29-5] (2022 Form 1040 for Johnnie Gibson, reflecting PTIN "1793" for preparer "A" and firm "Divine Tax Services LLC"); [D.E. 29-7] (2022 Form 1040 for Arold Guillod, reflecting PTIN "1793" for preparer "A" and firm "Divine Tax Services LLC").[2]

This is all to say, Defendant's self-serving statements in his deposition and counterstatement of facts (to the extent they exist beyond bare refutations of the Governments statements of fact) are either conclusory in summarily denying the Government's statements or plainly contrary to the record of evidence—Defendant's *own* record of evidence. While there may have been multiple individuals preparing each tax return, for the tax returns in [D.E. 60-1], Defendant has represented to this Court that *he prepared them* and that they are the result of improved tax preparation practices. But these returns—the post-improvement returns—reflect some of the same defects alleged by the Government as evidence that Mr. Saint-Hilaire stands in violation of the Internal Revenue Code. And it is also clear that Defendant, despite his allegations that he affixes his PTIN to any tax return he finalizes, does not do so.

To attempt to refute these and other allegations, Defendant could have put forth, for example, business records of the processing of tax returns showing that he was not the preparer (or, at least, finalizer); or, at bare minimum, complaint tax

[2] Also, the prepared tax returns in [D.E. 60-1] do not appear to contain any of the associated forms (e.g., Form 8889 for health savings account deductions) that would identify whether these returns actually contain the same allegedly baseless credits or deductions as those identified by the Government regarding violations of § 6694. In other words, the 152 provided records are perhaps incomplete.

returns with *his* PTIN (that he ostensibly did not know was suspended [D.E. 33 at 36]). But he cites to nothing but his deposition, which has proven unreliable when compared to his own further testimony, representations to the Court, and the record of the evidence.

By Defendant's own exhibit to [D.E. 60] alone, even notwithstanding the similarities to the other tax returns identified by the Government, it is clear that Mr. Saint-Hilaire was acting as a "ghost preparer." *See Espinal*, 2021 WL 3666323, at *4. In other words, Mr. Saint-Hilaire was filing tax returns without properly identifying himself as the tax return preparer or filer. He inherently admitted to this behavior by way of [D.E. 60] and [D.E. 60-1], and the same pattern of tax preparation and filing behavior is evident in the tax returns identified by the Government as containing false information, which we will explore more in Section I.B. There can be no "*genuine* issue of *material* fact," *Anderson*, 477 U.S. at 247–48 (emphasis in original), such that a "reasonable jury may infer from [Mr. Saint-Hilaire's] assumed facts the conclusion upon which [his] claim[s] rest," *Mize*, 93 F.3d at 743. In other words, it is inescapable that Mr. Saint-Hilaire repeatedly violated § 6695 of the Internal Revenue Code, and no reasonable jury could find otherwise.

Under § 7407, this violation alone is enough to begin our inquiry into whether a permanent injunction is appropriate to curtail Defendant's behavior, and to what extent. We will, however, continue our analysis by addressing the Government's allegations under § 6694.

b. Internal Revenue Code § 6694

Section 6694 of the Internal Revenue Code addresses a tax return preparer's understatement of a taxpayer's liability. The Government alleges that "Mr. Saint-Hilaire regularly violates Section 6694(a)[3] and (b)[4] by preparing tax returns containing phony credits and deductions, including unreimbursed employee business expenses, fuel tax credits, residential energy credits, and health savings account deductions." [D.E. 68 at 3]. "Section 6694(a) is implicated where an individual negligently understates tax liability. *Judisch v. United States*, 755 F.2d 823, 830 (11th Cir. 1985). And § 6694(b) then imposes penalties on tax preparers who prepare any return or claim for a refund in a manner that violates § 6694(a) and does so willfully or recklessly." *United States v. Stinson*, 729 F. App'x 891, 895 (11th Cir. 2018).

[3] "If a tax return preparer[ ] (A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a person described in paragraph (2), and (B) knew (or reasonably should have known) of the position, such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim." I.R.C. § 6694(a).

[4] "(1) . . . Any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to a conduct described in paragraph (2) shall pay a penalty with respect to each such return or claim in an amount equal to the greater of[] (A) $5,000, or (B) 75 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim. (2) . . . Conduct described in this paragraph is conduct by the tax return preparer which is (A) a willful attempt in any manner to understate the liability for tax on the return or claim, or (B) a reckless or intentional disregard of rules or regulations." I.R.C. § 6694(b).

In support of its allegations, the Government highlights several tranches of tax credits or other claimed deductions that appear (although they should not) on tax returns prepared by Mr. Saint-Hilaire.

i. *Unreimbursed Employee Business Expenses*

The first tranche of allegedly fraudulent claimed deductions is for "UEBE," or unreimbursed employee business expenses." [D.E. 68 at 4]; *see also* I.R.C. § 62(a)(2)(A) ("Reimbursed expenses of employees"). Per the IRS, taxpayers "can no longer claim a deduction for unreimbursed employee expenses unless [they] fall into one of the following categories of employment, or have certain qualified educator expenses[:] Armed Forces reservists[; q]ualified performing artists[; f]ee-basis state or local government officials[; or e]mployees with impairment-related work expenses." Internal Revenue Serv., U.S. Dep't of the Treasury, Pub. No. 529, *Miscellaneous Deductions* (2020), https://www.irs.gov/publications/p529; [D.E. 68 at 4]; Internal Revenue Serv., U.S. Dep't of the Treasury, Form 1040 (2024); Internal Revenue Serv., U.S. Dep't of the Treasury, Form 2016 (2024). This has been the case since 2018. Internal Revenue Serv., U.S. Dep't of the Treasury, Pub. No. 529, *Miscellaneous Deductions: For use in preparing 2018 returns* (2018), https://www.irs.gov/pub/irs-prior/p529--2018.pdf; [D.E. 68 at 4].

In other words, for any and all tax returns prepared by Mr. Saint-Hilaire since 2018, unless any of his clients fell into the four limited categories still allowed to claim UEBE deductions from 2018 to present, there should be no UEBE deductions claimed. And yet the records of at least twenty tax returns prepared by Defendant

from 2021 to 2023 reflect UEBE deductions. [D.E. 68 at 5] (summary table of UEBE deductions claimed and SMF citations).

For instance, Mr. Ifran Bostanci, who was found to have two instances of claimed UEBE deductions—once in 2021 for $15,482 and again in 2022 for $3,139—despite not qualifying for any of the enumerated categories:

> Q. Mr. Bostanci, do you see the Form 2106 for your 2021 tax return?
> A. Yes.
> Q. First, were you an Armed Forces reservist in 2021?
> A. I'm sorry?
> Q. Were you in the Armed Forces as a reservist in 2021?
> A. No.
> Q. Were you a performing artist in 2021?
> A. No.
> Q. Were you a fee-basis government official in 2021?
> A. No.
> Q. Did you have any impairment-related work expenses?
> A. Like laundry, washing.
> Q. Did you have any expenses related to a physical or mental disability?
> A. No.
> . . .
> Q. if you flip two pages, on the left side you see a Form 2106, employee business expenses.
> A. Yes.
> Q. Do you see that?
> A. Uh-huh.
> Q. Were you an Armed Forces reservist in 2022?
> A. No.
> Q. Were you a performing artist in 2022?
> A. No.
> Q. Were you a fee-basis government official in 2022?
> A. No.

[D.E. 32 at 24:12–25:2, 28:4–14] (preliminary injunction hearing transcript, direct of Mr. Bostanci). Mr. Bostanci further testified at the preliminary injunction hearing that he indeed worked with Mr. Saint-Hilaire for the tax years 2021 and 2022, and

that he dealt with "only" Mr. Saint-Hilaire when having his tax return prepared. *Id.* at 30:20–31:24] ("Q. So as far as preparing the actual return, is Mr. Saint-Hilaire the person you dealt with, or did other people assist in that process? A. No, only him.").

In short, Mr. Bostanci's tax returns for 2021 and 2022, prepared by Mr. Saint-Hilaire, should not have reflected *any* UEBE deductions at all. Mr. Bostanci simply did not qualify for them. His as-filed tax forms, however, reflect $15,482 and $3,139 in UEBE deductions claimed for 2021 and 2022, respectively. [D.E. 29-2 at 4] (Form 2106 reflecting $15,482 in UEBE for vehicle and business items); [D.E. 29-3 at 4] (Form 2016 for 2022 reflecting $3,139 in UEBE for parking/toll/transportation and business). This pattern is reflected in the preliminary injunction hearing testimony of several of Defendant's other clients. *See, e.g.*, [D.E. 32 at 37:4–41:6 (direct of Carl Roundtree, confirming Defendant prepared his 2021 tax return and that he did not fall into a UEBE category), 57:4–58:17 (direct of Jorge Blanco, confirming Defendant prepared his 2021 tax return and that he did not fall into a UEBE category), 122:12–124:23 (direct of Tia Brown[5], confirming that Defendant prepared her 2021 tax return and stating that she was a legal assistant in 2021)].

In response to the Government's evidence, Defendant presented no actual issues of fact. For instance, in response to the paragraphs in the Government's SMF regarding Mr. Bostanci's UEBE deductions, Mr. Saint-Hilaire responds only that: "[it is d]isputed that Mr. Saint Hilaire 'falsely claimed' anything on this [2021] return"

[5] Notably, Ms. Brown's 2022 Form 1040 reflects a preparer name of "Pelancia Victor," a PTIN of "1793," and a firm name of "Divine Tax Service LLC." [D.E. 29-27 at 2].

and that "[it is d]isputed that Mr. Saint Hilaire 'falsely claimed' or 'falsely reported' anything on MR. Bostanci's 2022 tax return." [D.E. 77 ¶¶ 25, 20]. *See also id.* ¶¶ 41 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Mr. Roundtree's return. As he has testified previously, the client's [*sic*] provide the information which is inputted into the return."), 35 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Mr. Blanco's 2021 and 2022 tax returns."). In both his response in opposition and CSFM, Defendant raises no actual, factual dispute with regard to the claimed UEBE deductions, which occur time and again on the at-issue tax returns.

Again, UEBE deductions by nature are not even a remotely close call—qualification for claiming these deductions has been so far limited since 2018 that unless a client were to fall within one of those four limited categories, claiming such deductions should not occur in any shape or form. This is not a matter of degree, it is binary.

ii. Fuel Tax Credits

The Government's motion also raises fuel tax credits as another area of concern for the at-issue tax returns. Fuel tax credits are governed generally by Internal Revenue Code § 34, "[c]ertain uses of gasoline and special fuels." Section 34 allows for fuel tax credits under three further sections of the Internal Revenue Code, §§ 6420 ("Gasoline used on farms"), 6421 ("Gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes"), and 6427 ("Fuels

not used for taxable purposes").[6] Under the given circumstances of applicability, it is only a small subset of the population that would qualify for these tax credits. But like with the UEBE deductions, Defendant's clients' tax documents repeatedly claim fuel tax credits when those clients clearly do not qualify.

Take, for example, Mr. Roundtree, who took the bus to his construction job and did not own a car:

> Q. I'm going to start with the 2021 tax year. So what did you do for work in 2021?
> A. I did construction.
> Q. And how far did you drive to get to your job?
> A. I catch the bus.
> Q. And once you got there, were you required to drive for your job?
> A. No.
> . . .
> Q. In either of those years[, 2021 and 2022,] did you purchase gasoline for something other than your car?
> A. I don't have a car.
> Q. Did you buy gasoline at all in 2021 or 2022?
> A. No.

[D.E. 32 at 37:7–38:2]. And yet Mr. Roundtree's tax forms for 2022 claimed fuel tax credits for 2,323 gallons of gasoline. [D.E. 29-34 at 7] (Form 4136 of Mr. Roundtree's 2022 tax return, reflecting a claim for a credit on 2,323 gallons of gasoline, amounting to $425.00). This pattern, in broad strokes, is reflected in the preliminary injunction hearing testimony of several of Defendant's other clients. *See, e.g.*, [D.E. 32 at 51:6–

[6] *See also* Internal Revenue Serv., U.S. Dep't of the Treasury, *Fuel Tax Credit*, https://www.irs.gov/credits-deductions/businesses/fuel-tax-credit ("The credit is available only for nontaxable uses of gasoline, aviation gasoline, undyed diesel and undyed kerosene. Nontaxable uses are purposes where fuel isn't used for regular driving purposes[.]").

10 (direct of Aysa Hall: "Q. Did you buy 2,324 gallons of gasoline for off highway business use in 2022? A. No. Q. Did you tell Mr. Saint-Hilaire that you did? A. No."), 79:11–15 (direct of Maureen Parkes[7]: "Q. All right. Did you buy 2,343 gallons of gasoline for off highway business in 2022? A. No. Q. Did you tell Mr. Saint-Hilaire that you did? A. No, I didn't."), 128:2–8 (direct of Tia Brown: "Q. And looking at line 1(a). Did you purchase 2,324 gallons of gasoline for off-highway business use in 2022? A. No. Q. Did you tell Mr. Saint-Hilaire that you did? A. No, I did not. Q. Do you have any idea where that came from? A. I have no clue.")].

To the Government's cited evidence in its SMF, Defendant again raises no genuine dispute of material fact, other than plain refutations of the statements. *Compare* [D.E. 67 at 9 ¶ 50 ("On a Form 4136 attached to Mr. Roundtree's 2022 tax return, Mr. Saint-Hilaire falsely reported that Mr. Roundtree purchased 2,323 gallons of gasoline for off-highway business use when Mr. Roundtree did not tell Mr. Saint-Hilaire that he did."), 11 ¶ 58 ("On a Form 4136 attached to Ms. Hall's 2022 tax return, Mr. Saint-Hilaire falsely reported that Ms. Hall purchased 2,324 gallons of gasoline for off-highway use when Ms. Hall did not tell Mr. Saint-Hilaire that she did."), 14 ¶ 81 ("On a Form 4136 attached to Mrs. Parkes 2022 tax return, Mr. Saint-Hilarie falsely reported that Mrs. Parkes purchased 2,343 gallons of gasoline for off-highway business use when Mrs. Parkes did not tell Mr. Saint-Hilaire that she did."), 18 ¶ 107 ("On a Form 4136 attached to Ms. Brown's 2022 tax return, Mr. Saint-Hilaire

[7] Notably, Ms. Parkes' 2022 Form 1040 reflects a preparer name of "A," a PTIN of "1793," and a firm name of "Divine Tax Services LLC." [D.E. 29-36 at 2].

falsely reported that Ms. Brown purchased 2,324 gallons of gasoline for off-highway business use when Ms. Brown did not tell Mr. Saint-Hilaire that she did.")] *with* [D.E. 77 at ¶¶ 31 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Mr. Roundtree's return. As he has testified previously, the client's [*sic*] provide the information which is inputted into the return."), 33 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Ms. Hall's 2022 tax return. The information on her return was based on the information she provided, either verbally or with documentation."), 39 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Mrs. Parkes' 2022 tax return."), 46 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Ms. Brown's 2021 and 2022 tax returns. The information on her return was based on the information she provided, either verbally or with documentation."). Defendant provides no citation to any evidence in the record in support of his assertions (e.g., documents provided by his clients reflecting such information).

Again, like with the UEBE deductions, such fuel tax credits can only be claimed under very limited circumstances. And yet the claimed fuel tax credits appear repeatedly on the prepared tax forms of several of Defendant's clients, even when it is quite clear they would not qualify.

iii. *Residential Energy Credits*

The Government's motion also highlights allegedly wrongfully claimed residential energy credits as another touchpoint of Defendant's violation of § 6694. Residential energy credits are also known as the "Residential Clean Energy Credit."

Internal Revenue Serv., U.S. Dep't of the Treasury, *Residential Clean Energy Credit*, https://www.irs.gov/credits-deductions/residential-clean-energy-credit. As the name would suggest, "[t]he Residential Clean Energy credit can apply to certain clean energy installations, including: Solar panels[;] Battery storage technology (not less than 3 kwh)[;] Solar water heaters[;] Geothermal heat pumps[;] Small wind energy projects[; and] Fuel cell property[.]" Internal Revenue Serv., U.S. Dep't of the Treasury, Pub. No. 5968, *Residential Clean Energy Credit (25D)*, https://www.irs.gov/pub/irs-pdf/p5968.pdf; *see also* Internal Revenue Serv., U.S. Dep't of the Treasury, Form 5695 (2025), https://www.irs.gov/pub/irs-pdf/f5695.pdf.

In other words, a qualifying claimant of these tax credits would need to have or be engaged in some sort of clean energy installation at their place of residence. The prepared tax forms of several of Defendant's clients reflect claims for these residential clean energy credits, sometimes over ten thousand dollars' worth [D.E. 68 at a7], despite not qualifying for them. Take again, for example, Mr. Bostanci:

> Q. Did you rent or own your home in 2021?
> A. I rent.
> Q. In 2021 did you make any energy efficient improvements to your home you're renting?
> A. No.
> . . .
> Q. Were any of the things were just talked about, like your job, your renting your house, different for 2022?
> A. No.
> . . .
> Q. If you flip one page, there should be a Form 5695. It says residential energy credits at the top.
> A. Uh-huh. Right, I see it.
> Q. And if you look at line 3, it says that you had $7,262 in qualified small wind energy property costs in 2021. Is that accurate?

A. No.
Q. Did you give Mr. Saint-Hilaire that number?
A. No, I didn't.
Q. What about line 4? It says you had $5,522 in qualified geothermal heat pump property costs. Is that accurate?
A. No.
Q. Did you give Mr. Saint-Hilaire that number?
A. No, I didn't.

[D.E. 32 at 22:7–26:16]. Yet, Mr. Bostanci's tax documents indeed reflect several residential tax credit claims in 2021 and 2022—including several with repeated values or partial values. [D.E. 29-3 at 7] (Form 5695 for 2021 claiming, e.g., $7,262 in qualified small wind energy property costs and $5,522 for qualified geothermal heat pump property costs); [D.E. 29-3 at 7] (Form 5695 for 2022 claiming, e.g., $7,262 in qualified small wind energy property costs and $9,522 in qualified geothermal heat pump property costs).

And like the UEBE credits, this general pattern repeats in the testimony of several of Defendant's clients. *See, e.g.*, [D.E. 32 at 56:14–18 (direct of Jorge Blanco: "Q. And did you rent or own your home? A. I rented in a rental community in Doral. Q. In either 2021 or 2022 did you make any energy efficient improvements to the home you rent? A. No, Sir."), 91:7–21 (direct of Luis Bravo[8]: "[Q.] You should see a Form 5695, residential energy credits on the left-hand side. A. Yes. Q. And on line 3 there it says you had $2,326 in qualified small wind energy property costs. Do you see that? A. Yes. Q. Is that accurate? A. No. Q. Did you give that number to Mr.

[8] Notably, Mr. Bravo's 2022 Form 1040 reflects a preparer name of "A," a PTIN of "1793," and a firm name of "Divine Tax Services LLC." [D.E. 29-13 at 2].

Saint-Hilaire? A. No. Q. And on the next line it says you had a similar amount of geothermal heath pump property costs. Is that accurate? A. No. Q. Did you give Mr. Saint-Hilaire that number. A. No.")].

Here, again, Defendant's counterstatement of material facts reflects only base refutations of the Government's factual assertions. *Compare* [D.E. 67 at 7 ¶ 36 ("On a Form 5695 attached to Mr. Bostanci's 2021 tax return, Mr. Saint-Hilaire falsely reported that Mr. [Bostanci] had $7,262 in qualified small wind energy property costs and $5,522 in qualified geothermal heat pump energy costs when Mr. Bostanci did not tell Mr. Saint-Hilaire that he did."), 12 ¶ 66 ("On a Form 5695 attached to Mr. Blanco's 2021 tax return, Mr. Saint-Hilaire falsely reported that Mr. Blanco had $2,423 in qualified solar water heating property costs when Mr. Blanco did not tell Mr. Saint-Hilaire that he did."), 16 ¶ 90 ("On a Form 5695 attached to Mr. Bravo's 2022 tax return, Mr. Saint-Hilaire falsely reported that Mr. Bravo had $2,326 in qualified small wind energy property costs and $2,422 in qualified geothermal heat pump property costs when Mr. Bravo did not tell Mr. Saint-Hilaire that he did.")] *with* [D.E. 77 ¶¶ 26 ("Disputed that Mr. Saint Hilaire 'falsely reported' anything on Mr. Bostanci's 2021 tax return."), 35 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Mr. Blanco's 2021 and 2022 tax returns."), 42 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Mr. Bravo's 2022 tax return. The information on his return was based on the information he provided, either verbally or with documentation.")]. Defendant provides no citation to any evidence in the record in support of his assertions.

iv. Health Savings Account Deductions

Further, the Government raises allegedly fraudulent health savings account deductions as its final example of Defendant's violation of § 6694. A health savings account, or HSA, is one of a handful of programs "designed to give individuals tax advantages to offset health care costs." Internal Revenue Serv., U.S. Dep't of the Treasury, Pub. No. 969, *Health Savings Accounts and Other Tax-Favored Health Plans*, https://www.irs.gov/publications/p969. Governed by Internal Revenue Code § 223, eligibility is tied to the individual having a health insurance plan that is considered to be a "high deductible health plan" or "HDHP." I.R.C. § 223(c).

The Government claims in its motion that, post-2021, the frequency of claimed HAS deductions on the tax returns prepared by Mr. Saint-Hilaire skyrocketed to 38 to 50% of all prepared returns. [D.E. 68 at 8]. This is, says the Government, "because he invents deductions to non-existent HSAs for customers who do not even qualify with a high deductible health plan." *Id.*

The testimony of Defendant's clients supports this assertion. Take, for example, Mr. Bravo:

> Q. Did you have health insurance in 2021?
> A. Yes.
> Q. Is that though your work?
> A. Yes.
> Q. Do you know was that a high deductible health plan?
> A. No, just the basic.
> Q. And did you have a separate health savings account that you contributed money to?
> A. No.
> Q. Is that the same for 2022?
> A. Correct.

[D.E. 88 at 6–16]. Yet Mr. Bravo's tax documents reflect $969 claimed in 2021 and $6,522 claimed in 2022. [D.E. 29-12 at 15] (Form 8889 for 2021 reflecting $969 in claimed HSA contributions); [D.E. 29-13 at 18] (Form 8889 for 2022 reflecting $6,522 in claimed HSA contributions). This is consistent with several of Defendant's other clients. *See, e.g.*, [D.E. 32 at 9:17–10:3 (direct of Harold Lopez: "Q. Did you have health insurance in 2022? A. Yes. Q. Was that through your work? A. Yes. Q. Do you know whether it was a high deductible health plan? A. No. Q. I'm sorry, that was confusing question on my part. Do you know what a high deductible health plan is? A. No. Q. Do you have a separate health savings account that you contribute money to? A. No."), 38:14–19 (direct of Carl Roundtree: "Q. Did you have health insurance in 2021? A. Yeah, I got health insurance, yeah. Q. Is that through your job? A. It's through my job. Q. Do you know whether it was a high deductible health plan? A. I don't think it was that. Only me. I don't have any kids and a wife. Q. Do you have a separate health savings account that you would contribute money to? A. No, not that I'm aware of.")].

And, again, Defendant raises no genuine dispute of material fact, other than a base refutation of the Government's statements of fact. *Compare* [D.E. 67 at 6 ¶ 30 ("On a Form 8889, *Health Savings Accounts (HSA)*, attached to Mr. Lopez's 2022 tax return, Mr. Saint-Hilaire falsely reported that Mr. Lopez contributed $7,444 to a health savings account when Mr. Lopez did not tell Mr. Saint-Hilaire that he did."), 10 ¶ 52 ("On a Form 8889 attached to Mr. Rountree's 2022 tax return, Mr. Saint-

Hilaire falsely reported that Mr. Roundtree contributed $8,433 to a health savings account when Mr. Roundtree did not tell Mr. Saint-Hilaire that he did."), 16 ¶ 91 ("On a Form 8889 attached to Mr. Bravo's 2022 tax return, Mr. Saint-Hilaire falsely reported that Mr. Bravo contributed $6,522 to a health savings account when Mr. Bravo did not tell Mr. Saint-Hilaire that he did.") *with* [D.E. 77 ¶¶ 21 ("Disputed that Mr. Lopez did not provide the information pertaining to a health savings account."), 31 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Mr. Roundtree's return. As he testified previously, the client's [*sic*] provide the information which is inputted into the return."), 42 ("Disputed that Mr. Saint Hilaire 'falsely reported' or 'falsely claimed' anything on Mr. Bravo's 2022 tax return. The information on his return was based on the information he provided, either verbally or with documentation."). Yet Defendant provides no citation to any evidence in the record in support of his assertions.

As for what this all means under § 6694, and by extension, § 7407, again, the Government has alleged that "Mr. Saint-Hilaire regularly violates Section 6694(a) and (b) by preparing tax returns containing phony credits and deductions, including unreimbursed employee business expenses, fuel tax credits, residential energy credits, and health savings account deductions." [D.E. 68 at 3]. Section 6694, subsection (a) states the following:

> If a tax return preparer[ ] (A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a person described in paragraph (2), and (B) knew (or reasonably should have known) of the position, such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal

> to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

I.R.C. § 6694(a). And, under Internal Revenue Code § 7407, if a tax return preparer has "engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title," and "injunctive relief is appropriate to prevent the recurrence of such conduct," a district court is empowered to issue such an injunction. I.R.C. § 7407(b)(1)–(2).

v. *Analysis*

First, in tracing the evidentiary throughline between §§ 6695 and 6694, there are several examples of the exact filing behavior demonstrated in the prepared tax returns in [D.E. 60-1], which Mr. Saint-Hilaire has admitted he prepared [D.E. 60 at 5], also existing in the tax returns identified by the Government as containing false claims of credits and/or deductions. *See, e.g.*, [D.E. 29-13 at 2] (Luis Bravo 2022 Form 1040 with preparer name of "A," PTIN of "1793," and firm "Divine Tax Services LLC"); [D.E. 29-27 at 2] (Tia Brown 2022 Form 1040 with preparer name of "Pelancia Victor," PTIN of "1793," and firm "Divine Tax Services LLC"); [D.E. 29-36 at 2] (Maureen Parkes 2022 Form 1040 with preparer name of "A," PTIN of "1793," and firm "Divine Tax Services LLC").

To attempt to refute the Government's allegations that he was the preparer of these tax records, among others, Defendant could have put forth, for example, emails or other written records from clients providing the information the Government is alleging is fraudulent (e.g., fuel use or having a high deductible health plan); notes in

a client file from an in-person meeting detailing such information; or, again, compliant tax returns with *his* PTIN. Per Mr. Saint-Hilaire, these records should indeed exist. [D.E. 67-2 at 111:11–14] ("Q. And so if there's documentation, as you said before, it should be in the client file, right? A. It's supposed to be in the file, because there's somebody filing every piece of paper supposedly."). But he again cites to nothing but his deposition, which has proven legally unreliable when compared to his own further testimony, representations to the Court, and the record of the evidence.

"A court need not permit a case to go to a jury . . . when the inferences that are drawn from the evidence, and upon which the non-movant relies, are 'implausible.'" *Mize*, 93 F.3d at 743 (citation omitted). "Where the evidence is circumstantial, a court may grant summary judgment when it concludes that no reasonable jury may infer from the assumed facts the conclusion upon which the non-movant's claim rests." *Id.* That is the case here. As a matter of law the only finding supported in this record is that the myriad tax returns identified by the Government for the purposes of § 6694 violations were not prepared by Defendant so as to reflect Defendant's actions in understanding the tax liabilities of his clients. No other inference can reasonably be drawn given that Mr. Saint-Hilaire's own records, after he presented them to the Court, reveal over one-hundred records of tax returns he claims to have prepared but, by and large, reflect the same tendencies to file tax returns under the PTIN of another individual,

Thus, the tax returns prepared by Mr. Saint-Hilaire contain understatements of tax liability that could not possibly be the result of mere mistakes because his clients so clearly did not qualify for the stated tax credits or deductions (e.g., HSA deductions despite not having a high deductible health plan; fuel tax credits despite not owning a car; or residential energy credits for individuals who rented and were not building any energy improvements at their place of residence). As § 6694(a) "is implicated where an individual negligently understates tax liability," we agree that Mr. Saint-Hilaire thereby stands in violation, *repeatedly*, of that provision. *United States v. Stinson*, 239 F. Supp. 3d 1299, 1319 (M.D. Fla. 2017), *aff'd*, 729 F. App'x 891 (11th Cir. 2018). But we also believe he is in violation of § 6694(b), which "imposes penalties on tax preparers who prepare any return or claim for refund in a manner that violates § 6694(a) and does so willfully or recklessly." *Id.* (citing 26 U.S.C. § 6694(b)). "Willfulness does not require fraudulent intent or an evil motive; it merely requires a conscious act or omission made in the knowledge that a duty is therefore not being met." *Id.* (citation and alteration omitted).

Both the prepared tax returns identified by Mr. Saint-Hilaire in [D.E. 60-1] and the tax returns identified by the Government in its motion span several years—from at least 2021 to 2023. And Defendant has a history of being investigated, warned, and fined for violations of the revenue laws—including for using a PTIN that belonged to another person and understating tax liabilities. [D.E. 31 at 9–10] (findings of fact as to the preliminary injunction stage regarding Defendant's prior run-ins with the IRS, dating back to 2013). The claimed credits or deductions are

egregious in that they are, in essence, binary questions—either a client qualifies or they do not. A client who is making no energy improvements to their home cannot possibly qualify for a residential energy credit. [D.E. 32 at 22:7–26:16] (Mr. Bostanci rented and was not making residential energy improvements). A client who does not drive and has not purchased any sort of fuel cannot possibly qualify for a fuel tax credit. [D.E. 32 at 37:7–38:2] (Mr. Roundtree did not own a car or buy fuel). The volume and nature of these offenses make clear that these were conscious acts by Mr. Saint-Hilaire to understate his clients' tax liability.

"A tax return preparer acts willfully 'if the preparer disregards, in an attempt wrongfully to reduce the tax liability of the taxpayer, information furnished by the taxpayer or other persons.'" *Stinson*, 239 F. Supp. 3d at 1319 (citing *United States v. Elsass*, 978, F. Supp. 2d 901, 918 (S.D. Ohio 2013), *aff'd*, 769 F.3d 390, 398 (6th Cir. 2014)). As discussed, Mr. Saint-Hilaire's clients repeatedly testified that they did not know where Defendant came by the information regarding the credits and deductions on their prepared tax returns—but it was not provided by them. *See, e.g.*, [D.E. 32 at 79:11–15 (direct of Maureen Parkes stating she did not inform Mr. Saint-Hilaire of off-highway gasoline use), 128:2–8 (direct of Tia Brown stating same)]. And there is no identification of information to the contrary from Mr. Saint-Hilaire.

Further, "[a] tax return preparer 'recklessly or intentionally' disregards an IRS rule or regulation 'if the preparer takes a position on the return or claim for refund that is contrary to a rule or regulation … and the preparer knows of, or is reckless in not knowing of, the rule or regulation in question.'" *Stinson*, 239 F. Supp. 3d at 1319

(citing *Elsass*, 978, F. Supp. 2d at 918). Mr. Saint-Hilaire was a tax preparer for "over 20-some years" and "used to go to IRS conference[s] here and there every year when they [would hold a] conference, especially in Orlando, also in other states" and attended classes to get CPE credits. [D.E. 67-2 at 14:10–23]. And yet, he has repeatedly prepared and filed tax returns "with the same types of false and improper claims that served to wrongfully reduce the taxpayer's liability." *Stinson*, 239 F. Supp. 3d at 1319.

Elsass is instructive here. In *Elsass*, the Sixth Circuit affirmed the imposition of an injunction under § 7407 on summary judgment after de novo review, under §§ 6694 and 6695, among other provisions. 769 F.3d at 393–96. As to § 6694(b), the Sixth Circuit cites the district court's findings regarding defendant Elsass' knowledge of the law and elements of the tax code, as well as evidence in the record showing the egregiousness of his conduct (e.g., deductions for deceased relatives). *Id.* at 393–94 (citing *Elsass*, 978 F. Supp. 2d at 930, to note that "'the proper characterization of itemized deductions is so easily ascertainable'" to a knowledgeable individual). While defendants did not directly dispute those specific findings on appeal, the court emphasized that, "to the extent that they do dispute it, any such claim has no support in the record, which is replete with violations." *Id.* at 394. That is the case here—willful actions taken by a long-practicing tax preparer with a self-admitted history of filing prepared tax returns under another's PTIN. The question is, then, whether it is proper to issue a permanent injunction that curtail Mr. Saint-Hilaire's violations. We think it is.

c. Whether a Permanent Injunction is Appropriate Under § 7407

To demonstrate that "injunctive relief is appropriate to prevent the recurrence of [Defendant's] conduct," and that an injunction barring Mr. Saint-Hilaire from ever again acting as a tax return preparer is appropriate, I.R.C. § 7407(b)(2), we will apply the foregoing analysis to the following factors:

> (1) the gravity of the harm caused by the offense;
> (2) the extent of the defendant's participation;
> (3) the defendant's degree of scienter;
> (4) the isolated or recurrent nature of the infraction;
> (5) the defendant's recognition (or non-recognition) of his own culpability; and
> (6) the likelihood that the defendant's occupation would place him in a position where future violations could be anticipated.

Stinson, 729 F. App'x at 897 (collecting cases from the Sixth, Eighth, and Ninth Circuits and affirming a permanent injunction under § 7407 where the defendant was "responsible for the fraudulent conduct" and that conduct "was likely to recur"). Notably, Defendant does not address any of the Internal Revenue Code provisions in his opposition to the Government's motion, let alone any of the foregoing factors, although the Government's brief does identify them. [D.E. 68 at 12].

i. Gravity of the Harm

This factor favors the Government. Defendant's conduct as alleged in the Government's motion spanned several years from 2021 to 2023, and he has also had repeated, prior contact with the IRS regarding other concerns of similar violations. [D.E. 31 at 10]. Additionally, Defendant's conduct has affected numerous taxpayers. Several of Defendant's clients were affected by his understatement of their tax

liabilities when preparing their respective tax forms. These individuals have now necessarily endured an investigation into their taxes after relying on what they believed was Mr. Saint-Hilaire's knowledge and experience as a paid tax preparer. And Mr. Saint-Hilaire has recently submitted further evidence of continuing to violate the Internal Revenue Code by still acting as a "ghost preparer." Such conduct "also drains administrative resources as the Government has needed to audit many tax returns" and monitor Defendant for further violations. *Stinson*, 239 F. Supp. 3d at 1321. Mr. Saint-Hilaire has also seemingly admitted that these practices made him "a threat" to clients and society at a large, and although he claims to have amended these practices to comply with the tax laws, that is demonstrably false. [D.E. 60 at 2]; [D.E. 60-1].

ii. *The Extent of Mr. Saint-Hilaire's Participation*

This factor also favors the Government. As discussed, Defendant does attempt to claim that, while he is indeed a tax return preparer and even if he worked on a certain return, he was either not the only one, was not the final sign-off, or other the clients provided the information. *See, e.g.*, [D.E. 77 ¶¶ 1, 30, 42, 43]. But the record of the evidence (a substantial amount of which Mr. Saint-Hilaire himself put before the Court) clearly indicates that Mr. Saint-Hilaire regularly committed violations of § 6695, in failing to properly identify himself as the tax preparer of the document. Additionally, those exact filing patterns—including using someone else's PTIN to file tax returns—are evident in many of the tax returns identified by the Government as being clear violations of the tax code under § 6694 (e.g., fuel credits,

HSA accounts, residential energy credits). *See, e.g.*, [D.E. 29-13]; [D.E. 29-27]; [D.E. 29-36].

iii. Mr. Saint-Hilaire's Degree of Scienter

This factor, too, favors the Government. Mr. Saint-Hilaire was a partner at the Divine Tax Services, LLC. [D.E. 67-2 at 37]. He was a tax preparer for "over 20-some years" and testified to years of training via conferences and CPE credit certifications. [D.E. 67-2 at 14:10–23]. He also had prior investigations, warnings, and fines from the Internal Revenue Service, dating back to 2013—including for improper use of another's PTIN and preparing tax returns with baseless deductions and credits. [D.E. 31 at 9–10]. Further, Mr. Saint-Hilaire's own briefing in [D.E. 60] characterizes his actions, which continued through the point of the preliminary injunction [D.E. 60-1], as having made him "a threat" to clients and the public at large. [D.E. 60 at 2]. It is inescapable that Mr. Saint-Hilaire knew or should have known of the effects of his violations of the revenue laws, whether failing to properly identify himself as a tax return preparer under § 6695 or the understatement of his client's tax liabilities under § 6694.

iv. The Isolated or Recurrent Nature of the Infraction; the Defendant's Recognition of His Own Culpability; and the Likelihood of Repetition

These factors, which overlap as applied here, also favor the Government. Mr. Saint-Hilare's expedited motion to have the preliminary injunction revoked or amended clearly expresses that he wishes to, and would, return to preparing tax returns: "Mr. Saint Hilaire is only seeking to overturn the portion of the injunction

that prohibits him from preparing returns. . . . Tax return preparation is the only job Mr. Saint Hilaire is qualified to do at this stage of his life." [D.E. 60 at 2, 4]. And while the expedited motion alleges that "Mr. Saint Hilaire has learned a great deal from this process" and is no longer "a threat to any clients he may take on or the public at large" [D.E. 60 at 2] it does so in the same document attaching over one-hundred tax returns that fail to properly identify him as the preparer, in violation of § 6695. [D.E. 60-1]. The same motion also alleges that these still-improper tax returns are the improved result of better, more diligent business practices. [D.E. 60 at 4–5]. What's more, the Government has identified prepared tax returns for Mr. Saint-Hilaire's clients that understate tax liabilities for the same period for which Mr. Saint-Hilaire submitted the "improved" tax returns in [D.E. 60-1]—2022 and 2023. *Compare* [D.E. 68 at 5–10] (summary tables of sampled prepared tax returns with understated tax liabilities) *with* [D.E. 60-1 at 1–6] (listing 152 records spanning 2022 and 2023). And, further, Mr. Saint-Hilaire's actions have been the subject of investigations, warnings, and fines by the IRS, dating back to 2013. [D.E. 31 at 9–10]. There is every indication that not only would Mr. Saint-Hilaire return to preparing tax returns, but also that his violations would continue to recur because, despite claiming he has learned and "improved" his practices, the record reflects that is false.

Again, to issue an injunction prohibiting a defendant from further engaging in the alleged conduct under § 7407, our findings must be twofold:

(1) that a tax return preparer has—

> (A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided this title,
>
> (B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as a tax preparer,
>
> (C) guaranteed the payment of any tax refund or the allowance of any tax credit, *or*
>
> (D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws, *and*
>
> (2) that injunctive relief is appropriate to prevent the recurrence of such conduct[.]

I.R.C. § 7407(b)(1)–(2) (emphasis added). Here, not only has Mr. Saint-Hilaire violated §§ 6694 and 6695, but he has done so with startling frequency, willfulness, and consistency. *See* I.R.C. § 7407(b)(2) (district courts are empowered to enjoin a defendant from acting as a tax preparer in the entirety if the conduct is so continuous or repeated that an injunction barring specific conduct will not suffice to prevent further violations).

Accordingly, even drawing all inferences in his favor, liability has been established under section 7407 and the Court should issue a permanent injunction under § 7407 enjoining Mr. Saint-Hilaire from ever again acting as a tax preparer.

2. Internal Revenue Code § 7408

The Government separately argues it is entitled to a permanent injunction under I.R.C. § 7408, which empowers district courts to issue an injunction for the violation of certain "specified conduct"—"any action, or failure to take action" under §§ 6700 (promoting abusive tax shelters), 6701 (aiding and abetting understatement of tax liability), 6707 (failure to furnish information regarding reportable

transactions), or 6708 (failure to maintain lists of advisees with respect to reportable transactions).

In particular, the Government's motion focuses on § 6701, regarding the aiding and abetting the understatement of tax liabilities, and allowing the imposition of a penalty for any person:

> (1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,
> (2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and
> (3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person[.]

I.R.C. § 6701(a)(1)–(3); [D.E. 68 at 15]. "Subsection (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document." I.R.C. § 6701(d). Section 6701 is, in so many words, an anti-fraud provision, and thus requires proof of such fraud. *Carlson v. U.S.*, 754 F.3d 1223, 1228 (11th Cir. 2014). Additionally, "'[i]f a particular statement has a substantial impact on the decision-making process or produces a substantial tax benefit to a taxpayer, the matter is properly regarded as "material."'" *Stinson*, 239 F. Supp. 3d at 1322 (citing *United States v. Schiff*, 269 F. Supp. 2d 1262, 1271 (D. Nev. 2003)).

This is a comparatively smaller argument, comprising roughly two paragraphs of the Government's motion, and reads somewhat as an "in the alternative." [D.E. 68 at 15–16]. Defendant, for his part, does not address or even mention § 7408 or §

6701. [D.E. 75].

Section 6701 is not exclusive to the conduct of subordinates but does put particular emphasis on the activities of subordinates relative to the term "procures." I.R.C. § 6701(c)(1)–(2). A subordinate would "any other person," including a director, "over whose activities Mr. Saint-Hilaire had "direction, supervision, or control." I.R.C. § 6701(c)(2).

It is indeed true that Mr. Saint-Hilaire was a supervisor of Divine Tax Services:

> Q. And so you were the manager of Divine Tax Services?
> A. We – I was one of the person working in Divine.
> Q. As a manager?
> A. We have several offices. I can't be in all the offices, but I was a partner.
> Q. Who else was involved?
> A. I can't recall, sir.
> Q. Do you recall telling the IRS that you managed Divine Tax Services?
> A. When [in the] Miami office, I am here to supervise to make sure everything is working.
> Q. When you say multiple offices, how many offices are there?
> A. We have several offices as well at that time.

[D.E. 67-2 at 40:19–41:8]. He worked, ostensibly, as a partner in the business with Pelancia Victor. [D.E. 67-2 at 36]. But while Mr. Saint-Hilaire does indeed agree that he was a supervisor, the duties he describes are not necessarily consistent with "aid[ing], assist[ing], or advis[ing]" violations of federal tax law, I.R.C. § 6701(a)(1)–(3):

> A. Somebody in the office has to make sure all the documents is in the file. Because a supervisor -- I manage office. Everybody supposed to make sure that all the file the client bring, they find their place. I am not there for me to just like bring copy, make copies, go to the file to input it. I am just there to supervise. This is my job, to make sure the office run. And not only that, I have to go to the other office to double-

> check. This is my job, to make sure like the line go, you know, everybody – make sure what they supposed to do.
> Q. When you supervise the office and when you meet with Mr. Lopez[, a client whose prepared tax returns contain a fuel tax credit claim for 2,220 gallons of gasoline for off-highway use], is it not part of your responsibilities to make sure that there are not fraudulent claims on the tax returns?
> A. A tax return is prepared and then whatever they present to us. This is our job, but also to not only Aniel Saint-Hilaire who supervise all, check the tax return. All of us to make sure all the documents are in the file.
> Q. Okay. What documents is in the file for this?
> A. They couldn't bring the file, but right now, whatever the client bring to us, that's what we put. Yes.
> Q. And so if there's documentation, as you said before, it should be in the client file, right?
> A. It's supposed to be in the file, because there's somebody filing every piece of paper supposedly.
> . . .
> Q. You don't believe that it is part of your responsibilities as a supervisor to make sure that there are not fraudulent claims --
> A. No, no. I prepare -- I am just to make sure that the office is running.

[D.E. 67-2 at 110:12–112:10]. And in the two paragraphs allotted to this argument in the Government's motion, which put particular emphasis on the "illegal conduct perpetrated by subordinates," Plaintiff does not point to a specific return or action taken by Mr. Saint-Hilaire, relative to his supervision of, or actions taken in concert with, others that suggests he has indeed aided and abetted them in perpetrating violations of the Internal Revenue Code.

In other words, for Mr. Saint-Hilaire individually, there is a trail of evidence—documented tax returns that he has claimed he prepared and/or that share the same characteristics as those he has claimed to have prepared—that indicates he is responsible for (1) repeatedly acting as a "ghost preparer" in violation of § 6695 and

(2) understating tax liabilities on said "ghost prepared" tax returns, in violation of § 6694. And while Defendant may indeed have been a less-than-ideal supervisor, the fact that others may have worked on some unspecified prepared tax returns or parts thereof does not mean that there is an evidentiary throughline tying Mr. Saint-Hilaire's violative actions to the actions of others. *See, e.g.*, [D.E. 67-3 at 52:19–53:2] (declaration of Brian Thoby, employee of Divine Tax Services: "Q. In the declaration section, do you have customers sign? A. No. That's – that's between them in the back and Mr. Aniel. Q. That's between the customer and Mr. Saint-Hilaire? A. Yeah, because I don't – like I said, I don't really input deductions. So he has to – he has to make them sign all the paperwork.").

Thus, we cannot agree that the Government has carried its burden at summary judgment here with respect the emphasis in its argument regarding Mr. Saint-Hilaire's supervision or direction *of subordinates*.

But to the extent that Mr. Saint-Hilaire *aided* in—i.e., contributed to or had a hand in—the creation of prepared tax returns that he knew would cause the understatement of tax liabilities for his clients, it is clear from the record of evidence and the foregoing analysis as to § 7407 that he indeed did. Again, until the issuance of the preliminary injunction, Mr. Saint-Hilaire was actively involved in preparing tax returns for his clients. [D.E. 60 at 5]. He himself submitted over one-hundred prepared tax returns that he claims to have prepared, and not a single one properly identifies him, as required under § 6695, as the paid tax preparer. [D.E. 60-1]. The Government has identified numerous tax returns that baselessly claim credits and/or

deductions that understate his clients' tax liabilities and also reflect startlingly similar or altogether identical improper filing credentials. *See, e.g.*, [D.E. 29-13 at 2] (Luis Bravo 2022 Form 1040 with preparer name of "A," PTIN of "1793," and firm "Divine Tax Services LLC"); [D.E. 29-27 at 2] (Tia Brown 2022 Form 1040 with preparer name of "Pelancia Victor," PTIN of "1793," and firm "Divine Tax Services LLC"); [D.E. 29-36 at 2] (Maureen Parkes 2022 Form 1040 with preparer name of "A," PTIN of "1793," and firm "Divine Tax Services LLC").

Further, Mr. Saint-Hilaire has acted as a tax preparer for "over 20-some years" [D.E. 67-2 at 14:10–23], and has an extensive history, dating back to 2013, of investigations, warnings, and fines from the IRS—including for improper use of another's PTIN and preparing tax returns with baseless deductions and credits. [D.E. 31 at 9–10]. And, also, employees viewed Mr. Saint-Hilaire as ultimately being in charge of clients' deductions on their prepared tax forms. [D.E. 67-3 at 52:19–53:2]. As the Eleventh Circuit stated when commenting on the scienter element of § 7408, "'if the preparer *knows* that use of the tax document as prepared will result in an understatement of tax liability, must not the document necessarily be false or fraudulent?'" *Carlson*, 754 F.3d at 1227–228 (citing *Warner v. United States*, 698 F. Supp. 877, 882 (S.D. Fla. 1988) (alteration omitted and emphasis in original).

Hence, Mr. Saint-Hilaire—at minimum—aided in or contributed to the preparation of these tax returns, particularly with respect to deductions and also, with his "20-some years" of experience and prior investigations, warnings, and fines from the IRS, knew or had reason to know that the inclusion of baseless credits and

deductions would have a material impact on understating a client's tax liabilities. Although neither party has identified really any material in the record to support or refute this claim in particular, we think the same course of conduct analyzed under § 7407, and restated here, creates evidence that Mr. Saint-Hilaire also violated § 7408 as a matter of law. A permanent injunction under § 7408 should also issue to curtail Mr. Saint-Hilaire from further aiding in the preparation of tax returns in a manner that violates the revenue laws.

3. Internal Revenue Code § 7402

At long last, we return to § 7402, the "catch-all" of the injunctive power of a district court under the Internal Revenue Code. Again, "the decision to issue an injunction under § 7402(a) is governed by the traditional factors shaping the district court's use of the equitable remedy." *Ernst*, 735 F.2d at 1301 (collecting cases). As applied, permanent injunctive relief is warranted under § 7402(a) if "(1) [Defendant] has interfered with the administration and/or enforcement of the internal revenue laws; (2) [there is] a continuing irreparable injury to the United States in the absence of an injunction; and (3) [there is a] lack of an adequate remedy at law." *Khan*, 2006 WL 2037165, at *1 (citation omitted); *see also Keener*, 342 F.3d at 1269 ("Permanent injunctive relief requires three elements: (1) success on the merits; (2) continuing irreparable injury; and (3) no adequate remedy at law.").

As to the first element, whether Mr. Saint-Hilaire interfered with the administration and/or enforcement of the internal revenue laws, the record at summary judgment indicates that he indeed has. Among other things, § 6695 of the

Internal Revenue Code "requires paid return preparers to identify themselves on the returns they prepare for customers by including their preparer tax identification number ('PTIN') on the return." *Espinal*, 2021 WL 3666323, at *4. Mr. Saint-Hilaire has submitted records to this Court that make clear he does not do this as required—even to the point of including not just another PTIN, but someone else's name as the listed "paid preparer." And to make matters worse, these same records are ostensibly the result of "improved" business practices. There is no issue of material fact here. So, on this basis alone Defendant has violated the requirements of § 6695, and, thus triggered § 7407(a). But the record also reflects numerous prepared tax returns with baseless claimed credits and/or deductions that have strikingly similar, if not identical, filing credentials and patterns to those in the tax returns Defendant admits he prepared. Having prepared those tax returns, and in the context of the full record, Defendant has also violated § 6694, and, again triggered § 7407(a). So, as to the Government's success on the merits, or that Mr. Saint-Hilaire indeed interfered with the enforcement of the revenue laws, we believe that this factor weighs in favor of the Government.

Second, there is indeed a continuing irreparable injury to the United States in the absence of an injunction. This is made abundantly clear by Defendant's expedited motion to lift the preliminary injunction [D.E. 60], which requested that this Court lift the preliminary injunction so that Mr. Saint-Hilaire could resume preparing tax returns for clients. [D.E. 60 at 2] ("Mr. Saint Hilaire is only seeking to overturn the portion of the injunction that prohibits him from preparing returns.").

The expedited motion carries on at-length about "steps [Defendant] has taken to his practice to vastly improve the procedures he implements in preparing returns and ensuring errors [do not occur]," and then goes on to include over one-hundred tax returns he prepared that supposedly show "an improved business practice and [the] implementation of added security measures," only for those tax returns at [D.E. 60-1] to reflect—at minimum—consistent violations of § 6695. [D.E. 60 at 4–5]. Defendant would undoubtedly resume his tax preparation endeavors were the injunction to be lifted, despite it being clear that any "improvements" made have not controlled for violations of the revenue laws. This factor tips to the Government.

Finally, as to any adequate remedy at law, we believe the third factor also favors the Government. Defendant has a prior history with the Internal Revenue Service. [D.E. 31 at 9–10]. In 2013 and 2014, Defendant received letters from the IRS informing him of errors in his prepared returns. *Id.* at 9. In 2015, Mr. Saint-Hilaire was under investigation by the IRS for issues with Schedule A and C deductions and education credits. *Id.* In 2017, Mr. Saint-Hilaire was warned via letter "regarding his use of an expired PTIN and a PTIN that belonged to another person." *Id.* at 10. And he was later assessed a $75,990 fine in 2018. *Id.* And now, Mr. Saint-Hilaire again finds himself at odds with the IRS—for failing to properly identify himself as a tax return preparer and for improperly claimed credits and/or deductions on prepared tax returns. But even then, it is clear—by way of Mr. Saint-Hilaire's own actions before this Court—that he has not stopped violating the revenue laws. *See* [D.E. 60-1]. And that is true despite Mr. Saint-Hilaire's claims

that he has "learned a great deal from this process and[] is determined to never be in this position again." [D.E. 60 at 2]. Mr. Saint-Hilaire has been investigated, warned, and fined, and yet still finds himself here.

In this sense, *Askins & Miller Orthopaedics, P.A.* is instructive. In *Askins*, the Eleventh Circuit reversed and remanded the district court's decision not to issue a preliminary injunction for violations of § 7402(a), because "the district court erroneously imposed a categorical rule that prevented a proper exercise of its broad equitable discretion [under the Code]." *United States v. Askins & Miller Orthopaedics, P.A.*, 924 F.3d 1348, 1362 (11th Cir. 2019). The court also noted in its decision that in the intervening period, the district court had granted summary judgment to the IRS on its damages claim for taxes, but deferred ruling on the IRS' request for a permanent injunction, due to the pendency of the appeal. *Id.* at 1354.

On remand, the district court granted the Government's renewed motion for preliminary injunction, concluding that the United States had "demonstrate[d defendant's] proclivity for unlawful conduct." *United States v. Askins & Miller Orthopaedics, P.A.*, No. 8:17-CV-92-T-27AAS, 2019 WL 7067149, at *2 (M.D. Fla. Dec. 23, 2019) ("The statutes with which Defendant must comply are specific, and the record demonstrates that they are well aware of the conduct the Government's proposed injunction addresses[.]"). Then, in 2020, the IRS sought a permanent injunction under § 7402(a) at summary judgment. *Askins*, 2020 WL 6195500, at *1. Concluding again that the statutes with which the defendant was required to comply were specific and that the record demonstrated that the defendant was "well aware

of the conduct the Government's proposed [permanent] injunction addresse[d]," the district court granted summary judgment against the defendant on the remaining claim and imposed a permanent injunction under § 7402(a) of the Internal Revenue Code. *Id.* at *3–4 ("Having previously found that each of these factors were satisfied for a preliminary injunction to issue . . ., as well as the analysis above explains, I find that each of the traditional equitable factors are satisfied for a permanent injunction to issue.").

Similarly, here, this Court has already once addressed the equities of this case in the context of a preliminary injunction and concluded that the Government had indeed met its burden as to the traditional equitable factors. [D.E. 31 at 21]. And as with *Askins*, the circumstances of the Government's case and Mr. Saint-Hilaire's actions have not changed, while the record has only become further developed. *See* [D.E. 31 at 12–19] (discussing the presence of baseless deductions in Defendant's prepared tax returns; that Defendant used the PTIN of other individuals; and the lack of credibility of Defendant's testimony at the preliminary injunction stage).

Ultimately, this Court has "broad equitable discretion" under § 7402(a). *Askins*, 924 F.3d 1362. In light of the equitable circumstances, the record supports a finding, as a matter of law, that the Court should issue a permanent injunction under § 7402(a) of the Internal Revenue Code to prevent Mr. Saint-Hilaire's conduct from reoccurring.

B. Disgorgement

The Government's motion next argues that § 7402(a) authorizes not just the imposition of a permanent injunction, but also disgorgement of "ill-gotten gains." [D.E. 68 at 17] (citation omitted). Curiously, however, the Government does not appear to be also seeking the civil penalties assessed under each statutory provision of the Internal Revenue Code. *See Loving v. I.R.S.*, 742 F.3d 1013, 1020 (D.C. Cir. 2014) ("Over the years, Congress has enacted a number of targeted provisions specific to tax-return preparers, covering precise conduct ranging from a tax-return preparer's failing to sign returns to knowingly understating a taxpayer's liability. *See, e.g.*, 26 U.S.C. §§ 6694, 6695, 6713. Each of those statutory proscriptions comes with corresponding civil penalties."). Section 6695, for example, sets out a $50 penalty for each failure to sign prepared tax return, with a maximum penalty of $25,000 per calendar year. I.R.C. § 6695(b). Instead, the Government seeks only disgorgement under § 7402(a).

As discussed, § 7402(a) does indeed confer upon the district courts "broad equitable discretion." *Askins*, 924 F.3d 1362; *see Ernst*, 735 F.2d at 1300 ("The language of § 7402(a) encompasses a broad range of powers necessary to compel compliance with the tax laws."). Disgorgement, generally, "is an equitable remedy intended to prevent unjust enrichment." *S.E.C. v. Monterosso*, 576 F.3d 1326, 1337 (11th Cir. 2014). "To be entitled to disgorgement, the Government need only produce a reasonable approximation of the defendant's ill-gotten gains." *Stinson*, 729 F. App'x at 899 (citing *S.E.C. v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004)).

"Exactitude is not a requirement; '[s]o long as the measure of disgorgement is reasonable, any risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty.'" *Calvo*, 378 F.3d at 1217 (citing *SEC v. Warde*, 151 F.3d 42, 50 (2d Cir. 1998)). "Nonetheless, a court's power to order disgorgement is not unlimited. It extends only to the amount the defendant profited from his wrongdoing." *Stinson*, 729 F. App'x at 899 (citing *S.E.C. v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005)).

In requesting $1,821,290.95, the Government derives its number from three documents produced by Mr. Saint-Hilaire: [D.E. 67-30] (2020 Funded Fee Payments); [D.E. 67-31] (2021 Funded Fee Payments); and [D.E. 67-32] (2022 Funded Fee Payments). [D.E. 67 ¶¶ 185–87]; [D.E. 68 at 19]. For each calendar year, these Funded Fee Payment documents appear to list out the "prep" fee per client (e.g., $499.00 for a Mr. Warner in 2022 [D.E. 67-32 at 1]). The Government then cites its conclusion that, "[b]ased on a sample of 45 customers of Mr. Saint-Hilaire, the returns Mr. Saint-Hilaire prepares have a 100% error rate." [D.E. 67 ¶ 17]. [D.E. 68 at 19].

It may indeed be true that Mr. Saint-Hilaire has a 100% error rate, but each of these Funded Fee Payment documents appear to list hundreds of customers "by [s]ite and [d]ate." The Government's motion, by way of sampling, identifies only a comparatively small fraction of these individuals as having understated tax liabilities (and returns that do not properly identify Mr. Saint-Hilaire). While the number of individuals, the details of whose tax returns, is indeed startling (and, thus, part of the basis of the foregoing recommendations regarding the issuance of a permanent

injunction), we are nonetheless loath to apply a blanket assumption that, for all offices and for literally every return prepared, there existed underpayment violations sufficient to merit disgorgement. The Government's request does not have to be exact, but we do not believe its analysis is commensurate with the fees it seeks to disgorge.

Accordingly, we find that the Government has met its burden as to the disgorgement of preparation fees associated with the individuals and years of their prepared tax returns identified in its motion:

Customer	**Tax Years**	**Fees**
Harold Lopez	2022	$360
Ifran Bostanci	2021, 2022	$485, $350
Carl Roundtree	2022	N/A
Aysa Hall	2022	$350
Jorge Blanco	2021, 2022	$375, $450
Robert Parkes	2021	N/A
Johnnie Gibson	2022	$440
Tia Brown	2021, 2022	$205, $305
Jean Aime	2023	N/A
Valerie Clayton	2023	N/A
Alvin Fenelus	2023	N/A
Anthony Garcia	2023	N/A
Daniel Jusma	2022, 2023	$404, N/A
Nixon Mesidor	2023	N/A
Diego Pajon	2023	N/A
Valentina Salamanca	2023	N/A
Hector Tamburi	2023	N/A
Maureen Parkes	2021, 2022	N/A
Luis Bravo	2022	N/A

[D.E. 68 at 5–10] (compiling summary tables).

That said, however, the Government's SMF only provides a Funded Fee Payment statement for the years 2020 through 2022. To the extent readily identifiable, the preparation fees charged are listed in the above table. The average of the identifiable fees charged is $372.40.[9] For the 24 instances of improperly prepared tax returns that the Government put forth in its motion, the average fee multiplied by instance is $8,937.60.

Thus, for summary judgment purposes at least, the Government can only sustain, as a matter of law, disgorgement limited to the amount of $8,937.60. If the Government seeks to pursue a broader disgorgement remedy, and/or seek monetary penalties available under the law, a limited trial on damages will have to be scheduled at which the Government presents compelling evidence to supports its calculations.

IV. CONCLUSION

Based on the foregoing, the undersigned **RECOMMENDS** that the Government's Motion for Summary Judgment [D.E. 68] be **GRANTED in part and DENIED in part**. The undersigned specifically recommends the following:

- Judgment should be entered in favor of the Government as to Counts One, Two Three and Four of the Complaint;

[9] This appears consistent, if not low, compared to the Funded Fee Payment documents, where "prep" fees are sometimes over $1,000. *See, e.g.*, [D.E. 67-32 at 1, 3–5].

- Defendant Saint-Hilaire should be permanently enjoined, pursuant to Internal Revenue Code §§ 7402, 7407, and 7408, from acting as a federal tax return preparer and preparing or filing federal tax returns, amended tax returns, or any other federal tax documents or forms for any person or entity other than himself; assisting in, advising, or directing the preparation or filing of federal tax returns, amended returns, or any other federal tax documents or forms for any person or entity other than himself; investing in, providing capital or loans to, or receiving fees or renumeration from a tax return preparation business; and operating, managing, working in, controlling, licensing, consulting with, or franchising a tax return preparation business.
- Defendant Saint-Hilaire should be ordered to disgorge the amount of $8,937.60.

Pursuant to Local Magistrate Rule 4(b) and Fed. R. Civ. P. 73, the parties have fourteen (14) days from service of this Report and Recommendation within which to file written objections, if any, with the District Judge. Failure to timely file objections shall bar the parties from *de novo* determination by the District Judge of any factual or legal issue covered in the Report *and* shall bar the parties from challenging on appeal the District Judge's Order based on any unobjected-to factual or legal conclusions included in the Report. 28 U.S.C. §636(b)(1); 11th Cir. R. 3-1; *see, e.g.*, *Patton v. Rowell*, 678 F. App'x 898 (11th Cir. 2017); *Cooley v. Comm'r of Soc. Sec.*, 671 F. App'x 767 (11th Cir. 2016).

DONE AND SUBMITTED in Chambers at Miami, Florida, this 21st day of January, 2026.

/s/ Edwin G. Torres
EDWIN G. TORRES
United States Magistrate Judge